

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA)
) Case No. 4:13-cr-019-001
v.)
)
) Judge McDonough/Steger
ARNALDO CABRERA)

MEMORANDUM AND ORDER

ARNALDO CABRERA (“Defendant”) came before the Court for an initial appearance on April 4, 2018, in accordance with Rule 32.1 of the Federal Rules of Criminal Procedure on the Petition for Warrant for Offender under Supervision (“Petition”).

After being sworn in due form of law, Defendant was informed of his privilege against self-incrimination under the 5th Amendment and his right to counsel under the 6th Amendment to the United States Constitution.

The Court determined Defendant wished to be represented by an attorney and that he qualified for the appointment of an attorney to represent him at government expense. Consequently, the Court APPOINTED Erin Rust to represent Defendant.

Defendant was furnished with a copy of the Petition, and had an opportunity to review that document with his attorney. The Court determined that Defendant was able to read and understand the Petition with the assistance of his counsel. In addition, AUSA Scott Winne explained to Defendant the specific charges contained in the Petition. Defendant acknowledged he understood the charges in the Petition.

The Government moved Defendant be detained pending disposition of the Petition or further Order of this Court. The Court explained Defendant’s right to a preliminary hearing and detention hearing and what those hearings entail. Defendant conferred with his counsel and waived the preliminary hearing, but requested a detention hearing. The detention hearing was scheduled on April 5, 2018.

The Court conducted a detention hearing on April 5, 2018. Defendant was represented by Attorney Erin Rust at the detention hearing, and the Government was represented by AUSA Michael Porter. The Government relied upon the testimony of United States Probation Officer Derek Beamer as well as the sworn Petition executed by Officer Beamer which includes a recitation of the various violations of conditions of supervision committed by Defendant (*i.e.*, answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer; no purchase, possession, and/or use of a controlled substance unless prescribed by a physician; no frequenting places where controlled substances are illegally sold, used,

distributed or administered; participation in a program of testing and/or treatment for drug abuse as directed by the probation officer). Defendant's counsel, Erin Rust proffered evidence on behalf of Defendant. Counsel for both sides were given an opportunity to argue for and against detention.

The undersigned finds that, since Defendant started his term of supervised release, he has tested positive for illegal controlled substances on four separate occasions and failed to appear for required drug tests on four additional occasions. Defendant's criminal history includes Attempted Especially Aggravated Robbery, Burglary of a motor vehicle and two federal convictions for being a felon in possession of a firearm. Defendant's continued use of illegal controlled substances and his unwillingness to adhere to the terms of his supervised release lead the Court to conclude that he is a danger to the community and a risk of flight.

The Court finds that the evidence establishes probable cause to believe that Defendant has committed violations of his conditions of supervised release. The Court finds that Defendant has not carried the burden of establishing by clear and convincing evidence that he does not pose a danger to any other person or to the community and that he is not a flight risk. Consequently, the Court **GRANTED** the Government's oral motion to detain Defendant pending disposition of the Petition or further order of this Court.

It is, therefore, **ORDERED** that:

1. Counsel for Defendant and the Government shall confer and make best efforts to submit to United States District Judge McDonough a proposed Agreed Order with respect to an appropriate disposition of the Petition for Warrant for Offender Under Supervision.
2. In the event counsel are unable to reach agreement with respect to an appropriate disposition of the Petition for Warrant for Offender under Supervision, they shall request a hearing before United States District Judge McDonough.
3. The Government's motion that Defendant be **DETAINED WITHOUT BAIL** pending further Order of this Court is **GRANTED**.

ENTER.

/s/Christopher H. Steger
UNITED STATES MAGISTRATE JUDGE